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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,303	11/10/2003	Satoshi Mizutani	20050/0200479-US0	5755
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DARBY & DARBY P.C. P. O. BOX 5257 NEW YORK, NY 10150-5257			EXAMINER REICHLE, KARIN M	
			ART UNIT 3761	PAPER NUMBER

DATE MAILED: 01/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/706,303

Applicant(s)

MIZUTANI ET AL.

Examiner

Karin M. Reichle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 8, 10, 11 and 15-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9 and 12-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Election/Restrictions*

1. Claims 8, 10-11 and 15-17 remain withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention and species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6-8-05.

### *Specification*

2. The substitute specification, including the abstract, filed 11-8-05 has not been entered because it does not comply with 37 CFR 1.121, i.e. doesn't show all additions by underlining and all deletions struck thru, e.g. see marked up copy, e.g. added paragraph numbers not underlined, headings and subheadings now in all capital letters but no additions or deletions shown, in paragraph 9, line 2, changes made but no additions or deletions shown. Since the Figures as filed 11-8-05 are described by the unentered substitute specification these Figures have not been approved.

3. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

For Example:

### *Drawings*

4. The drawings were received on November 8, 2005. These drawings are not approved by the Examiner, see the discussion *supra*.

5. The drawings are objected to because in Figures 2-4, the labels X-X, Y-Y and Z-Z should be avoided. Also the cross-sectional lines, e.g. in Figure 1, X-X, Y-Y and Z-Z, should be denoted by Roman or Arabic numerals, not letters. Figures 13A-D do not show a diagram as set forth on page 15. In Figures 1-6 and 8, the line from 8 should be dashed to denote underlying structure. In Figures 10-12, 8 should clearly denote the restriction, e.g. a line from the numeral thereto rather than a general arrow. In Figure 20, the lines from 38 and 39 should be arrows. Figure 31 should be labeled PRIOR ART. In Figure 27, the numeral 6 should clearly denote the cavity. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet"

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pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Description*

6. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112, first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: the abstract.

7. The abstract of the disclosure is objected to because the abstract should be limited to a single paragraph. Also terminology which can be inferred, e.g. "The present invention relates to", "according to the present invention", should be avoided. Correction is required. See MPEP § 608.01(b).

8. The disclosure is objected to because of the following informalities: The specification is replete with informalities. For example: 1) On page 3, line 9, "Disclosure of the Invention" should be --Summary of the Invention--. 2) On page 31, line 19, "21" should be --38--. 3) The Summary of the Invention section, i.e. a description of the claimed invention, and the invention of the claims is not commensurate in scope, see MPEP 608.01(d). 4) On page 18, line 8, "Best Mode of Carrying Out the Invention" should be --Detailed Description of the Invention--. 5) The use of a confusing variety of terms for the same thing should be avoided. See MPEP 608.01(o). For example, see title and page 1, lines 13-15, i.e. "Package" or "wrapping body" and "wrapping

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container”? The specification should be carefully reviewed and revised, as necessary, to overcome all the informalities. Applicant is thanked in advance for the cooperation in placing the specification in proper form.

Appropriate correction is required.

### *Claim Objections*

9. Claims 1-7, 9, 12-14 and 18 are objected to because of the following informalities: In claim 1, line 1, “a” should be --an--. On lines 5-6, “facing” (all) should be --adapted to face--. On line 8, “the” (1st) should be --a--. Lines 10-11 are grammatically incorrect and appear to missing a word or words, i.e. should these lines be rewritten --a cavity opening for guiding a fingertip inserted therein to the remainder of the cavity. On line 13, “a” (last) should be --the--. On line 14, “the” (2<sup>nd</sup>) should be --a. In claim 2, line 4, “for...in” should be --is formed--. In claim 5, lines 1-2, “dimension...direction” should be deleted. In claim 6, lines 2-3, “the length...direction” should be --a length--. In claim 18, “the ...dimension” should be --a length--. Appropriate correction is required.

### *Claim Rejections - 35 USC § 112*

10. Claims 2, 9 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Lines 1-2 of claim 2 are unclear, i.e. is Applicant claiming the sheet extending from lateral side to lateral side and also having a length or is Applicant claiming a sheet which extends

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from longitudinal end to longitudinal end, note the elected species is that of Figures 1-8. Claim 9 is also unclear, i.e. is Applicant claiming that the restriction portion is displaced from itself or that the portion is displaced a predetermined distance from one longitudinal end edge towards the center of the pad? Note the following section.

### ***Claim Language Interpretation***

11. The claim terminology is interpreted in light of the specific definitions on page 5, lines 7-17. Any other claim language not specifically defined has been interpreted in view of the usual and common meaning of such, i.e. the dictionary definition. Lines 13-14 of claim 1 now require that the restriction be adapted to stop the finger at a point “corresponding” to the position of the vagina. “Corresponding” as defined by the dictionary is “to be similar, parallel, equivalent or equal in character, quantity, origin, structure or function”. Since terminology is interpreted broadly, such terminology is interpreted as “similar” and “similar” is defined as “related in appearance or nature, alike though not identical”. Therefore, absent claiming of a specific position relative to the pad, the terminology “corresponding” is considered relative. While Applicant did not set forth the portion of the specification relied upon for support of the claim language added to claim 1, lines 13-14, the specification is considered to provide support for such because it discloses a restriction is in the vicinity of the vagina. (It is noted that if Applicant was attempting to claim the point being equivalent or equal to, i.e. the same as, the position of vagina the specification does not appear to disclose such, e.g. Figure 8, page 4, lines 9-15, page 5, lines 1-6, as best understood discloses that the cavity has a restriction portion at an end thereof adapted to stop the finger at a point which point is such that a portion of the finger, i.e. the ball

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thereof, substantially corresponds, e.g. see Figure 8 of the application, to the position of a vagina of a wearer when the pad is appropriately applied, i.e. the point at which the finger is stopped does not correspond to the vagina but to a point which is rearward thereof.) It is noted that claim 1 does not require the restriction be at a longitudinal end of the cavity. Claim 2, lines 2-3 as best understood are interpreted to require a sheet which extends from lateral side to lateral side and also having a length. Also the specific dimensions of the terminology “mini” have not been set forth, i.e. “mini” only requires the sheet be smaller than some portion of the remainder of the pad. Also the terminology “in the vicinity” in claim 7 and “by a predetermined distance” in claim 9 are considered relative absent the claiming of specifics thereof. Also claim 9 as best understood is interpreted to require the portion is displaced a predetermined distance from one longitudinal end edge towards the center of the pad.

***Claim Rejections - 35 USC § 102***

12. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

13. Claims 1-7, 9, 12-14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wierlacher '093.

Claim 1: See Figures, especially Figures 2, and 6-9, page 4, first full paragraph, page 6, lines 15-23, page 7, lines 3-5, page 8, lines 12-17, page 14, line 18-page 15, line 26, page 16, second and third full paragraphs, page 19, line 8-page 22, line 22, page 24, line 3-page 26, line 18, page 26, line 26-page 27, line 1, i.e. the pad is at least absorbent layer 21 which is adjacent the pudendal region and received in the groove between the labia majora, i.e. an interlabial pad,



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and which has an elongate shape with longitudinal and lateral directions, a body face side and an opposite face, the cavity is defined by 58, 48 and 46, see, e.g., Figures 2 and 5b, on the opposite face and extends in the longitudinal direction, the finger insertion opening is adjacent 58 and the finger restriction portion is either adjacent 48 where it slopes down longitudinally and converges in the Z-direction if the finger is inserted towards 32b or adjacent the intersection of 46, 52 and 56 if the finger is inserted towards 32a. Claim 1, lines 1, 7-8, 10-11, and 13-14 recite function, capability or property of the structure therein. Note again the Claim Language Interpretation section with regard to the terminology. It is also noted that the claim does not set forth the position of the finger restriction portion relative to any specific points, positions or structure of the pad. In light of the portions of Wierlacher cited supra, it is the Examiner's first position that the Wierlacher reference explicitly teaches such function, capability or property. In any case, i.e. the Examiner's second position, as noted supra the claim language recites functions, properties or capabilities of the structure set forth in claim 1. The Wierlacher reference at the very least teaches the structure of claim 1. Therefore there is sufficient factual evidence for one to conclude that such same structure of Wierlacher also inherently includes such claimed functions, properties and capabilities, see MPEP 2112.01.

Claim 2: The minisheet is either 58, or 20b in Figure 7. Note again the Claim Language Interpretation section supra especially with respect to the terminology "mini".

Claim 3: See the discussion of claim 1 supra, i.e. adjacent 48 the cavity narrows in width along the Z-axis or adjacent 52, see Figure 3, the cavity narrows in the width along the Y-axis.

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Claim 4: See discussion of claims 1 and 2, supra. The minisheet binds the opposite face to itself. It is noted that direct bonding of the face to itself is still not claimed.

Claim 5: see discussion of claims 1 and 3 supra, i.e. toward 52 in a longitudinal direction from the opening on the right side of 58 or in the Z-direction from 58 to 48.

Claim 6: See Figures and cited portions of Wierlacher supra.

Claims 7 and 9: See Claim Language Interpretation section supra especially with respect to the relative language and discussion of finger restrictions supra, i.e. absent claiming of specific distances relative to the ends and center, the Wierlacher reference is considered to teach the claimed structure.

Claims 12-14: These claims recite functions, properties or capabilities of the structure set forth in claim 1. If not already taught by the Wierlacher, see the portions cited supra, the Wierlacher reference at the very least teaches such structure of claim 1. Therefore there is sufficient factual evidence for one to conclude that such same structure of Wierlacher also inherently includes such claimed functions, properties and capabilities, see MPEP 2112.01.

Claim 18: see paragraph bridging pages 26-27, i.e. longitudinal extension of aid is less than a major portion of the length, i.e. less than 50%.

### ***Response to Arguments***

14. Applicant's remarks with respect to the informalities have been noted but are either deemed moot in that they have not been repeated or not persuasive for the reasons set forth supra. Applicant's remarks with respect to the prior art have been considered but are deemed not persuasive in that such are narrower than the teachings of the prior art relied upon and the claim

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language. For example, "cavity" as defined by the dictionary is "a hollow or hole". The prior art clearly defines a hollow between 58, 46 and 48 which hollow has a restriction at an end thereof capable of or inherently capable of stopping a finger at a point which "corresponds" to the position of the vagina, see the prior art rejection supra. For another example, the claims do not require the cavity have a single opening or the restriction portion being at a position which is the same as the position of the vagina.

### *Conclusion*

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any new grounds of rejection are necessitated by the amendments to claims 1-7, 9,12-14 and the addition of new claim 18.

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16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Karin M. Reichle  
Primary Examiner  
Art Unit 3761

KMR  
January 15, 2006